

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SANDRA WOODRICH and DEPARTMENT OF VETERAN AFFAIRS,  
MEDICAL CENTER, San Diego, CA

*Docket No. 99-1326; Submitted on the Record;  
Issued August 21, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability causally related to her August 4, 1996 employment injury; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of disability causally related to her accepted employment injury.

On August 4, 1996 appellant, then a 59-year-old custodial worker, filed a claim for a traumatic injury alleging that she cut her right thumb on that day while in the performance of duty. The Office subsequently accepted appellant's claim for a right thumb laceration.

On December 23, 1997 appellant filed a claim for recurrence of disability alleging that she had surgery on her thumb and wrist and that her condition had worsened, including pain and numbness "with sharp/like electric shocks going through hand, wrist -- thumb and finger."<sup>1</sup>

By letter dated February 5, 1998, the Office advised appellant that she needed to submit additional information regarding her claim for recurrence of disability, including a detailed narrative medical report explaining how her doctor believed that her condition was causally related to her accepted work-related injury.<sup>2</sup>

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<sup>1</sup> In a resubmission of her CA-2a claim received by the Office on December 7, 1998, appellant noted: "No recurrence -- ongoing since injury."

<sup>2</sup> In a memorandum of a telephone call dated January 23, 1998, the Office noted that appellant retired effective January 1, 1998.

By decision dated March 20, 1998, the Office denied appellant's claim for recurrence of disability on the grounds that she failed to establish that her current condition was causally related to her accepted injury.

In an undated letter received by the Office on December 7, 1998 appellant requested reconsideration. By nonmerit decision dated February 1, 1999, the Office denied appellant's request for reconsideration.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability and her August 4, 1996 employment injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup>

Appellant submitted multiple progress notes and medical records which did not provide a detailed history of injury or an opinion on causal relationship between appellant's current condition and her accepted right thumb laceration and are, therefore, insufficient to meet her burden of proof.

Appellant also submitted physical therapy notes in support of her claim. As a physical therapist is not a physician for the purposes of the Federal Employees' Compensation Act, these notes do not constitute medical evidence and are insufficient to meet appellant's burden of proof.<sup>4</sup>

As appellant failed to submitted rationalized medical opinion evidence establishing a causal relationship between her current condition and her accepted employment injury, she failed to meet her burden of proof and the Office properly denied her claim.

The Board further finds that the Office did not abuse its discretion pursuant to 5 U.S.C. § 8128(a) by refusing to reopen appellant's case for further consideration of the merits of her claim.

Appellant failed to support her December 7, 1998 request for reconsideration with new, relevant medical evidence supporting her contention that her recurrence of disability was due to her accepted injury. Furthermore, appellant's December 7, 1998 letter does not contain relevant, pertinent information not previously considered by the Office, new or relevant points of fact or law and does not allege that the Office erred in applying or interpreting a point of law. Instead, the letter notes appellant's needs for medical care and her reference to her submission for a schedule award. Indeed, in a medical report dated November 8, 1996, a doctor from the employing establishment noted that appellant could return to work without restrictions.

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<sup>3</sup> See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *Jane A. White*, 34 ECAB 515 (1983).

Thus, the evidence submitted in support of appellant's December 7, 1998 request for reconsideration does not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.606.<sup>5</sup> Therefore, appellant has not established that the Office abused its discretion under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent evidence not previously considered by the Office.

The decisions of the Office of Workers' Compensation Programs dated February 1, 1999 and March 20, 1998 are hereby affirmed.<sup>6</sup>

Dated, Washington, D.C.  
August 21, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> *Gaetan F. Valenza*, 35 ECAB 763 (1984).

<sup>6</sup> The Office has not issued a final decision on appellant's claim for a schedule award, therefore, it is not an issue before the Board in the present appeal; *see* 20 C.F.R. § 501.2(c).